

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

IRVIN JIHYUN LEE

**Registered Nurse License No. 554342
Nurse Anesthetist Certificate No. 3274**

Respondent .

Case No. 2011-932
OAH No. 2011060946

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 20, 2012..

IT IS SO ORDERED July 20, 2012.



Erin Niemela
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ADRIAN R. CONTRERAS
Deputy Attorney General
4 State Bar No. 267200
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2634
7 Facsimile: (619) 645-2061
E-mail: Adrian.Contreras@doj.ca.gov
8 *Attorneys for Complainant*

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2011-932

13 **IRVIN JIHYUN LEE**
14 **1389 Spectrum**
Irvine, CA 92618

OAH No. 2011060946

15 **Registered Nurse License No. 554342**
16 **Nurse Anesthetist Certificate No. 3274**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17 Respondent.

18 In the interest of a prompt and speedy settlement of this matter, consistent with the public
19 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
20 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
21 which will be submitted to the Board for approval and adoption as the final disposition of the
22 Accusation.

23 **PARTIES**

24 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
25 Board of Registered Nursing. She brought this action solely in her official capacity and is
26 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
27 Adrian R. Contreras, Deputy Attorney General.

28 ///

2. Respondent Irvin Jihyun Lee (Respondent) is represented in this proceeding by attorney Melanie Balestra, Esq., whose address is: 2424 S.E. Bristol St., Ste. 300 Newport Beach, CA 92660-0764.

3. On or about April 21, 1999, the Board of Registered Nursing issued Registered Nurse License No. 554342 to Irvin Jihyun Lee (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-932 and will expire on June 30, 2012, unless renewed.

4. On or about September 28, 2005, the Board of Registered Nursing issued Nurse Anesthetist Certificate No. 3274 to Irvin Jihyun Lee (Respondent). The Nurse Anesthetist Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-932 and will expire on June 30, 2012, unless renewed.

JURISDICTION

5. Accusation No. 2011-932 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 20, 2011. Respondent timely filed his Notice of Defense contesting the Accusation.

6. A copy of Accusation No. 2011-932 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2011-932. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of

documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in Accusation No. 2011-932.

11. Respondent agrees that his Registered Nurse License and Nurse Anesthetist Certificate are subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that email and facsimile copies of this Stipulated Settlement and Disciplinary Order, including email and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 554342 and Nurse Anesthetist Certificate No. 3274 to Respondent Irvin Jihyun Lee (Respondent) are revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no

1 more than 15 days of any address change and shall at all times maintain an active, current license
2 status with the Board, including during any period of suspension.

3 Upon successful completion of probation, Respondent's license shall be fully restored.

4 3. **Report in Person.** Respondent, during the period of probation, shall appear in
5 person at interviews/meetings as directed by the Board or its designated representatives.

6 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
7 practice as a registered nurse outside of California shall not apply toward a reduction of this
8 probation time period. Respondent's probation is tolled, if and when he resides outside of
9 California. Respondent must provide written notice to the Board within 15 days of any change of
10 residency or practice outside the state, and within 30 days prior to re-establishing residency or
11 returning to practice in this state.

12 Respondent shall provide a list of all states and territories where he has ever been licensed
13 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
14 information regarding the status of each license and any changes in such license status during the
15 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
16 license during the term of probation.

17 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
18 or cause to be submitted such written reports/declarations and verification of actions under
19 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
20 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
21 Respondent shall immediately execute all release of information forms as may be required by the
22 Board or its representatives.

23 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
24 state and territory in which he has a registered nurse license.

25 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
26 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
27 6 consecutive months or as determined by the Board.

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1 For purposes of compliance with the section, "engage in the practice of registered nursing"
2 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
3 non-direct patient care position that requires licensure as a registered nurse.

4 The Board may require that advanced practice nurses engage in advanced practice nursing
5 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

6 If Respondent has not complied with this condition during the probationary term, and
7 Respondent has presented sufficient documentation of his good faith efforts to comply with this
8 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
9 extension of Respondent's probation period up to one year without further hearing in order to
10 comply with this condition. During the one year extension, all original conditions of probation
11 shall apply.

12 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
13 prior approval from the Board before commencing or continuing any employment, paid or
14 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
15 performance evaluations and other employment related reports as a registered nurse upon request
16 of the Board.

17 Respondent shall provide a copy of this Decision to his employer and immediate
18 supervisors prior to commencement of any nursing or other health care related employment.

19 In addition to the above, Respondent shall notify the Board in writing within seventy-two
20 (72) hours after he obtains any nursing or other health care related employment. Respondent
21 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
22 regardless of cause, from any nursing, or other health care related employment with a full
23 explanation of the circumstances surrounding the termination or separation.

24 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
25 Respondent's level of supervision and/or collaboration before commencing or continuing any
26 employment as a registered nurse, or education and training that includes patient care.

27 Respondent shall practice only under the direct supervision of a registered nurse in good
28 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods

1 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
2 approved.

3 Respondent's level of supervision and/or collaboration may include, but is not limited to the
4 following:

5 (a) Maximum - The individual providing supervision and/or collaboration is present in
6 the patient care area or in any other work setting at all times.

7 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
8 care unit or in any other work setting at least half the hours Respondent works.

9 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
10 person communication with Respondent at least twice during each shift worked.

11 (d) Home Health Care - If Respondent is approved to work in the home health care
12 setting, the individual providing supervision and/or collaboration shall have person-to-person
13 communication with Respondent as required by the Board each work day. Respondent shall
14 maintain telephone or other telecommunication contact with the individual providing supervision
15 and/or collaboration as required by the Board during each work day. The individual providing
16 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
17 patients' homes visited by Respondent with or without Respondent present.

18 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
19 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
20 or for an in-house nursing pool.

21 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
22 registered nursing supervision and other protections for home visits have been approved by the
23 Board. Respondent shall not work in any other registered nursing occupation where home visits
24 are required.

25 Respondent shall not work in any health care setting as a supervisor of registered nurses.
26 The Board may additionally restrict Respondent from supervising licensed vocational nurses
27 and/or unlicensed assistive personnel on a case-by-case basis.

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1 Respondent shall not work as a faculty member in an approved school of nursing or as an
2 instructor in a Board approved continuing education program.

3 Respondent shall work only on a regularly assigned, identified and predetermined
4 worksite(s) and shall not work in a float capacity.

5 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
6 request documentation to determine whether there should be restrictions on the hours of work.

7 **10. Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and
8 successfully complete a course(s) relevant to the practice of registered nursing no later than six
9 months prior to the end of his probationary term.

10 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
11 Respondent shall submit to the Board the original transcripts or certificates of completion for the
12 above required course(s). The Board shall return the original documents to Respondent after
13 photocopying them for its records.

14 **11. Cost Recovery.** Respondent shall pay to the Board costs associated with its
15 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
16 amount of \$2,780.00. Respondent shall be permitted to pay these costs in a payment plan
17 approved by the Board, with payments to be completed no later than three months prior to the end
18 of the probation term.

19 If Respondent has not complied with this condition during the probationary term, and
20 Respondent has presented sufficient documentation of his good faith efforts to comply with this
21 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
22 extension of Respondent's probation period up to one year without further hearing in order to
23 comply with this condition. During the one year extension, all original conditions of probation
24 will apply.

25 **12. Violation of Probation.** If Respondent violates the conditions of his probation, the
26 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
27 and impose the stayed discipline (revocation/suspension) of Respondent's license.

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1 If during the period of probation, an accusation or petition to revoke probation has been
2 filed against Respondent's license or the Attorney General's Office has been requested to prepare
3 an accusation or petition to revoke probation against Respondent's license, the probationary
4 period shall automatically be extended and shall not expire until the accusation or petition has
5 been acted upon by the Board.

6 13. **License Surrender.** During Respondent's term of probation, if he ceases practicing
7 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
8 Respondent may surrender his license to the Board. The Board reserves the right to evaluate
9 Respondent's request and to exercise its discretion whether to grant the request, or to take any
10 other action deemed appropriate and reasonable under the circumstances, without further hearing.
11 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
12 subject to the conditions of probation.

13 Surrender of Respondent's license shall be considered a disciplinary action and shall
14 become a part of Respondent's license history with the Board. A registered nurse whose license
15 has been surrendered may petition the Board for reinstatement no sooner than the following
16 minimum periods from the effective date of the disciplinary decision:

17 (1) Two years for reinstatement of a license that was surrendered for any reason other
18 than a mental or physical illness; or

19 (2) One year for a license surrendered for a mental or physical illness.

20 14. **Physical Examination.** Within 45 days of the effective date of this Decision,
21 Respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician
22 assistant, who is approved by the Board before the assessment is performed, submit an
23 assessment of the Respondent's physical condition and capability to perform the duties of a
24 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
25 medically determined, a recommended treatment program will be instituted and followed by the
26 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
27 to the Board on forms provided by the Board.

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1 If Respondent is determined to be unable to practice safely as a registered nurse, the
2 licensed physician, nurse practitioner, or physician assistant making this determination shall
3 immediately notify the Board and Respondent by telephone, and the Board shall request that the
4 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
5 immediately cease practice and shall not resume practice until notified by the Board. During this
6 period of suspension, Respondent shall not engage in any practice for which a license issued by
7 the Board is required until the Board has notified Respondent that a medical determination
8 permits Respondent to resume practice. This period of suspension will not apply to the reduction
9 of this probationary time period.

10 If Respondent fails to have the above assessment submitted to the Board within the 45-day
11 requirement, Respondent shall immediately cease practice and shall not resume practice until
12 notified by the Board. This period of suspension will not apply to the reduction of this
13 probationary time period. The Board may waive or postpone this suspension only if significant,
14 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
15 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
16 Only one such waiver or extension may be permitted.

17 **15. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**
18 Respondent, at his expense, shall successfully complete during the probationary period or shall
19 have successfully completed prior to commencement of probation a Board-approved
20 treatment/rehabilitation program of at least six months duration. As required, reports shall be
21 submitted by the program on forms provided by the Board. If Respondent has not completed a
22 Board-approved treatment/rehabilitation program prior to commencement of probation,
23 Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.
24 If a program is not successfully completed within the first nine months of probation, the Board
25 shall consider Respondent in violation of probation.

26 Based on Board recommendation, each week Respondent shall be required to attend at least
27 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
28 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.

1 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
2 added. Respondent shall submit dated and signed documentation confirming such attendance to
3 the Board during the entire period of probation. Respondent shall continue with the recovery plan
4 recommended by the treatment/rehabilitation program or a licensed mental health examiner
5 and/or other ongoing recovery groups.

6 **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
7 completely abstain from the possession, injection or consumption by any route of all controlled
8 substances and all psychotropic (mood altering) drugs, including alcohol, except when the same
9 are ordered by a health care professional legally authorized to do so as part of documented
10 medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14)
11 days, by the prescribing health professional, a report identifying the medication, dosage, the date
12 the medication was prescribed, the Respondent's prognosis, the date the medication will no
13 longer be required, and the effect on the recovery plan, if appropriate.

14 Respondent shall identify for the Board a single physician, nurse practitioner or physician
15 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
16 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
17 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
18 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
19 considered addictive have been prescribed, the report shall identify a program for the time limited
20 use of any such substances.

21 The Board may require the single coordinating physician, nurse practitioner, or physician
22 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
23 medicine.

24 **17. Submit to Tests and Samples.** Respondent, at his expense, shall participate in a
25 random, biological fluid testing or a drug screening program which the Board approves. The
26 length of time and frequency will be subject to approval by the Board. Respondent is responsible
27 for keeping the Board informed of Respondent's current telephone number at all times.
28 Respondent shall also ensure that messages may be left at the telephone number when he is not

1 available and ensure that reports are submitted directly by the testing agency to the Board, as
2 directed. Any confirmed positive finding shall be reported immediately to the Board by the
3 program and Respondent shall be considered in violation of probation.

4 In addition, Respondent, at any time during the period of probation, shall fully cooperate
5 with the Board or any of its representatives, and shall, when requested, submit to such tests and
6 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
7 hypnotics, dangerous drugs, or other controlled substances.

8 If Respondent has a positive drug screen for any substance not legally authorized and not
9 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
10 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
11 practice pending the final decision on the petition to revoke probation or the accusation. This
12 period of suspension will not apply to the reduction of this probationary time period.

13 If Respondent fails to participate in a random, biological fluid testing or drug screening
14 program within the specified time frame, Respondent shall immediately cease practice and shall
15 not resume practice until notified by the Board. After taking into account documented evidence
16 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
17 suspend Respondent from practice pending the final decision on the petition to revoke probation
18 or the accusation. This period of suspension will not apply to the reduction of this probationary
19 time period.

20 18. **Mental Health Examination.** Respondent shall, within 45 days of the effective date
21 of this Decision, have a mental health examination including psychological testing as appropriate
22 to determine his capability to perform the duties of a registered nurse. The examination will be
23 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by
24 the Board. The examining mental health practitioner will submit a written report of that
25 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
26 Recommendations for treatment, therapy or counseling made as a result of the mental health
27 examination will be instituted and followed by Respondent.

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1 If Respondent is determined to be unable to practice safely as a registered nurse, the
2 licensed mental health care practitioner making this determination shall immediately notify the
3 Board and Respondent by telephone, and the Board shall request that the Attorney General's
4 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
5 practice and may not resume practice until notified by the Board. During this period of
6 suspension, Respondent shall not engage in any practice for which a license issued by the Board
7 is required, until the Board has notified Respondent that a mental health determination permits
8 Respondent to resume practice. This period of suspension will not apply to the reduction of this
9 probationary time period.

10 If Respondent fails to have the above assessment submitted to the Board within the 45-day
11 requirement, Respondent shall immediately cease practice and shall not resume practice until
12 notified by the Board. This period of suspension will not apply to the reduction of this
13 probationary time period. The Board may waive or postpone this suspension only if significant,
14 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
15 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
16 Only one such waiver or extension may be permitted.

17 19. **Therapy or Counseling Program.** Respondent, at his expense, shall participate in
18 an on-going counseling program until such time as the Board releases him from this requirement
19 and only upon the recommendation of the counselor. Written progress reports from the counselor
20 will be required at various intervals.

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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Melanie Balestra, Esq. I understand the stipulation and the effect it
4 will have on my Registered Nurse License, and Nurse Anesthetist Certificate. I enter into this
5 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
6 to be bound by the Decision and Order of the Board of Registered Nursing.

7
8 DATED: 3/8/12

Irvin Jihyun Lee
9 IRVIN JIHYUN LEE
Respondent

10 I have read and fully discussed with Respondent Irvin Jihyun Lee the terms and conditions
11 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
12 its form and content.

13 DATED: 3/8/12

Melanie Balestra
14 MELANIE BALESTRA, ESQ.
Attorney for Respondent

15
16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
19 Affairs.

20
21 Dated: 3/12/12

Respectfully submitted,

22 KAMALA D. HARRIS
Attorney General of California
23 LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Adrian R. Contreras

24 ADRIAN R. CONTRERAS
25 Deputy Attorney General
26 Attorneys for Complainant

27 SD2011800151
28 80613821.doc

Exhibit A

Accusation No. 2011-932

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
E-mail: linda.schneider@doj.ca.gov
8 *Attorneys for Complainant*

9
10 **BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2011-932**

13 **IRVIN JIHYUN LEE**
1389 Spectrum
14 Irvine, CA 92618

A C C U S A T I O N

15 Registered Nurse License No. 554342
16 Nurse Anesthetist License No. 3274

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about April 21, 1999, the Board of Registered Nursing issued Registered Nurse
25 License Number 554342 to Irvin Jihyun Lee (Respondent). The Registered Nurse License was in
26 full force and effect at all times relevant to the charges brought herein and will expire on June 30,
27 2012, unless renewed.
28

3. On or about September 28, 2005, the Board of Registered Nursing issued Nurse Anesthetist License Number 3274 to Irvin Jihyun Lee (Respondent). The Nurse Anesthetist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the licensee.

7. Section 2811, subdivision (b) provides that a license issued by the Board may be renewed if done within 8 years after expiration.

STATUTORY PROVISIONS

8. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

“(a) Considering the denial of a license by the board under Section 480; or

“(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

9. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 "...."

8 10. Section 493 of the Code states:

9 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
10 the department pursuant to law to deny an application for a license or to suspend or revoke a
11 license or otherwise take disciplinary action against a person who holds a license, upon the
12 ground that the applicant or the licensee has been convicted of a crime substantially related to the
13 qualifications, functions, and duties of the licensee in question, the record of conviction of the
14 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
15 and the board may inquire into the circumstances surrounding the commission of the crime in
16 order to fix the degree of discipline or to determine if the conviction is substantially related to the
17 qualifications, functions, and duties of the licensee in question.

18 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
19 'registration.'"

20 11. Section 2761 of the Code states:

21 "The board may take disciplinary action against a certified or licensed nurse or deny an
22 application for a certificate or license for any of the following:

23 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

24 "...."

25 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
26 functions, and duties of a registered nurse, in which event the record of the conviction shall be
27 conclusive evidence thereof.

28 "...."

12. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“ . . .

“(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

“(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

. “ ”

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

“(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

“(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

1 14. California Code of Regulations, title 16, section 1445 states:

2 "(b) When considering the suspension or revocation of a license on the grounds that a
3 registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such
4 person and his/her eligibility for a license will consider the following criteria:

5 "(1) Nature and severity of the act(s) or offense(s).

6 "(2) Total criminal record.

7 "(3) The time that has elapsed since commission of the act(s) or offense(s).

8 "(4) Whether the licensee has complied with any terms of parole, probation, restitution or
9 any other sanctions lawfully imposed against the licensee.

10 "(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
11 Penal Code.

12 "(6) Evidence, if any, of rehabilitation submitted by the licensee."

13 **COSTS**

14 15. Section 125.3 of the Code provides, in pertinent part, that the
15 Board/Registrar/Director may request the administrative law judge to direct a licentiate found to
16 have committed a violation or violations of the licensing act to pay a sum not to exceed the
17 reasonable costs of the investigation and enforcement of the case.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(August 27, 2007 Conviction for DUI on May 24, 2007)**

20 16. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
21 (f) of the Code in that Respondent was convicted of a crime that is substantially related to the
22 qualifications, functions, and duties of a registered nurse and a nurse anesthetist. The
23 circumstances are as follows:

24 17. On or about August 27, 2007, in a criminal proceeding entitled *People v. Irvin Jihyun*
25 *Lee*, in Orange County Superior Court, case number 07HM05069, Respondent was convicted on
26 his plea of guilty of violating Vehicle Code section 23152(b), driving with blood alcohol
27 concentration (BAC) of .08% or more, a misdemeanor. Respondent admitted and the court found
28 true the allegation of enhancement that he had a BAC of .15% or more. An additional count of

1 violating Vehicle Code section 23152(a), driving under the influence of alcohol, was dismissed
2 pursuant to a plea agreement.

3 18. As a result of the conviction, on or about August 27, 2007, Respondent was placed on
4 three years informal probation and was ordered to: pay a fine of \$390.00; pay restitution in the
5 amount of \$100.00; pay \$100.00 for a Probation Revocation Restitution Fine; pay \$50.00 for an
6 Alcohol Abuse Education fee; pay \$37.00 for a DUI Lab/Blood Alcohol Fee; pay \$20.00 in
7 security fees; and attend and complete a three month Level 1 First Offender Alcohol Program.

8 19. The facts that led to the conviction are that in the early morning of May 24, 2007, an
9 officer with the Irvine Police Department was on patrol, traveling southbound on Jeffrey
10 approaching Irvine Valley College when he saw a black Mazda sports car, later found to be
11 driven by Respondent, turn left onto Irvine Valley College against a red traffic arrow.
12 Respondent drove eastbound on Irvine Valley College and approached a new road under
13 construction that led to the college. Yellow tape and construction cones blocked both sides of the
14 road. Respondent went around the cones and a flat mound of dirt, made a U-turn, and came to a
15 stop. The officer stopped Respondent and approached him while he was in the car. The officer
16 smelled alcohol inside of the car. Respondent admitted he drank at least three beers that night.
17 His speech was slow and he hesitated to answer the officer's questions. When Respondent got
18 out to sit on the curb at the officer's request, he was unsteady on his feet and used the driver's
19 side door to keep his balance. The officer saw that Respondent's eyes were bloodshot and
20 watery. Respondent performed a series of field sobriety tests, which he was unable to complete
21 as explained and demonstrated. Respondent registered a .188% and .208% BAC on the
22 preliminary alcohol screening.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(August 5, 2010 Criminal Conviction for DUI on February 7, 2010)**

25 20. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
26 (f) of the Code in that Respondent was convicted of a crime that is substantially related to the
27 qualifications, functions, and duties of a registered nurse and a nurse anesthetist. The
28 circumstances are as follows:

1 21. On or about August 5, 2010, in a criminal proceeding entitled *People v. Irvin Jihyun*
2 *Lee*, in Orange County Superior Court, case number 10HM01800, Respondent was convicted on
3 his plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of
4 0.08% or more with one prior, a misdemeanor. Respondent admitted and the court found true the
5 enhancement allegation that Respondent's BAC was .15% or more, pursuant to Vehicle Code
6 section 23578. An additional count of violating Vehicle Code section 23152, subdivision (a),
7 driving under the influence of alcohol with one prior, was dismissed pursuant to a plea agreement.

8 22. As a result of the conviction, Respondent was placed on three years informal
9 probation and was ordered to: pay a fine of \$390.00; pay restitution in the amount of \$100.00;
10 pay \$100.00 for a Probation Revocation Restitution Fine, which was stayed to become effective
11 upon final revocation of probation; pay a \$100.00 Alcohol & Drug Assessment Program Fee; pay
12 a \$50.00 Alcohol Abuse Education Fee; pay a \$37.00 DUI Lab/Blood Alcohol Fee; pay a \$30.00
13 security fee; pay a Criminal Conviction Assessment fee per convicted count of \$30.00 per
14 misdemeanor/felony and \$35.00 per infraction; and attend and complete an 18 month Multiple
15 Offender Alcohol Program.

16 23. The facts that led to the conviction are that on or about the evening of February 7,
17 2010, an officer with the Irvine Police Department was dispatched to an apartment complex
18 parking structure regarding a possible DUI driver being detained by the apartment complex's
19 security supervisor. The security supervisor told the officer he was patrolling the apartment
20 complex when he saw a black 2004 Mazda RX8 drive into the entrance of the apartment
21 complex. He identified the driver as Respondent. The security supervisor saw the vehicle back
22 up from the entrance of the parking structure. While Respondent backed up, the rear of his
23 vehicle lightly struck some nearby bushes. When Respondent began driving, the security
24 supervisor stood in the apartment complex roadway and tried to stop Respondent by flashing his
25 flashlight toward the windshield. The security supervisor had to quickly move out of the roadway
26 so that Respondent would not hit him with the vehicle. Respondent's vehicle was swerving. The
27 security supervisor followed Respondent and stopped him. He smelled alcohol on Respondent's
28 breath, saw him stagger when he walked, and then called the police.

24. When the police officer arrived, the officer saw Respondent stagger. The officer smelled alcohol on Respondent's breath and saw that his eyes were watery and bloodshot. The officer conducted field balance tests. Based on the results, he accepted the security supervisor's citizen's arrest of Respondent for driving under the influence of alcohol. The officer transported Respondent to the police station and Respondent performed a breath test. The test indicated he had a BAC of .19%.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Use of Alcohol in a Dangerous Manner)

25. Respondent is subject to disciplinary action under section 2762, subdivision (b) of the Code in that on or about May 24, 2007, and February 7, 2010, as described in paragraphs 19 and 23, Respondent used alcoholic beverages to an extent or in a manner that was potentially dangerous and injurious to himself, and to others in that he operated a motor vehicle with a significantly high BAC.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Conviction of Alcohol-Related Criminal Offenses)

26. Respondent is subject to disciplinary action under section 2762, subdivision (c) in that on or about August 27, 2007, and August 5, 2010, as described in paragraphs 17 and 21, he was convicted of criminal offenses involving the consumption and/or self-administration of alcohol, which constitutes unprofessional conduct.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 554342, issued to Irvin Jihyun Lee;
2. Revoking or suspending Nurse Anesthetist License Number 3274, issued to Irvin Jihyun Lee;

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3. Ordering Irvin Jihyun Lee to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 5/20/11

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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